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Landlord and Tenant Notices

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LANDLORD AND TENANT NOTICES

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Introductory Note: The following article was prepared for the use of students taking the course in landlord and tenant law. In the hope that it may be of some use to practitioners in this state, it is reproduced here. For the convenience of the reader, the provisions of RCW 59.04.020 and a portion of the unlawful detainer statute, RCW 59.12.030, are set out below.*

Most of the problems with regard to the sufficiency of landlord and tenant notices arise under the provisions of the unlawful detainer statute now found in RCW 59.12.030, and it is with this statute that most of the discussion in this article will be concerned. However, refer-

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* RCW 59.04.020 **Tenancy from month to month—Termination.** When premises are rented for an indefinite time, with monthly or other periodic rent reserved, the tenancy is a tenancy from month to month, or from period to period on which rent is payable, and may be terminated by written notice of thirty days or more, preceding the end of any month or period, given by either party to the other. [Code 1881 § 2054; RRS § 10619.]

RCW 59.12.030 **Unlawful detainer defined.** A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him. When real property is leased for a specified term or period by expess or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him to quit the premises at the expiration of such month or period;

(3) When he continues in possession in person or by subtenant after a default in the payment of rent and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition for covenant and thereby save the lease from such forfeiture;

(5) When he commits or permits waste upon the demised premises, or when he sets up or carries on thereon any unlawful business, or when he erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him for three days' notice quit; or

ences to cases arising under other statutory provisions will be made in order to give a more complete account of the law applicable to such notices.

The Supreme Court of the State of Washington has said that a substantial compliance with the requirements of the unlawful detainer statute should be sufficient for the form or contents of a notice served under that statute.[1] However, other decisions make it apparent that certain formal provisions are either necessary, or at least a wise draftsman's precaution against litigation. Proof of compliance with the notice provisions of the unlawful detainer statute is necessary as an element of a cause of action under the statute.[2] Indeed, the language of the supreme court in one case[3] suggests that failure to offer such proof may constitute a jurisdictional defense in the sense that the point might be raised for the first time on appeal, but an earlier decision[4] clearly states that a court's jurisdiction in an unlawful detainer proceeding does not depend upon the service of an adequate notice and that such service is merely a fact, like others, which must be proved at the trial.

At the outset it should be noted that while notice is necessary to make a tenant guilty of unlawful detainer under the other subsections of RCW 59.12.030, such is not the case where a tenant holds over after the expiration of a lease for a specified term. The first subsection of RCW 59.12.030, which provides that a tenant is guilty of unlawful detainer when he holds over after the expiration of a specified term, also specifically provides that such a tenancy shall terminate *without notice* at the end of the term or period. Accordingly, it has been held the requirements of notice are inapplicable in an unlawful detainer proceeding brought against a tenant holding over after the expiration of a lease for a specified period.[5] Of course, if the landlord accepts rent for an additional period after the expiration of a specified term without an agreement that the additional letting is only for that specified period, a periodic tenancy will be created.[6] Thereupon the notice

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing, is served upon him in the manner provided in RCW 59.12.040. [1953 c 106 § 1. Prior: 1905 c 86 § 1; 1891 c 96 § 3; RRS § 812.]

[1] Provident Mutual Life Ins. Co. v. Thrower, 155 Wash. 613, 285 Pac. 654 (1930).

[2] Woodward v. Blanchett, 36 Wn.2d 27, 31, 216 P.2d 228 (1950); Davis v. Palmer, 39 Wn.2d 222, 235 P.2d 151 (1951).

[3] Davis v. Palmer, *supra*, note 2.

[4] State *ex rel.* Robertson v. Superior Court, 95 Wash. 447, 448-449, 164 Pac. 63 (1917), (cited in the Davis case, *supra*).

[5] Stanford Land Co. v. Steidle, 28 Wash. 72, 68 Pac. 178 (1902).

[6] Worthington v. Moreland MotorTruck Co., 140 Wash. 528, 531-532, 250 Pac. 30

requirements for periodic tenancies will become applicable.

Notices served by either landlords or tenants should, of course, be in writing. RCW 59.04.020, which is the provision governing the termination of periodic tenancies *by tenants*, specifically provides for "written notice of thirty days or more." Landlords who for some reason desire to use ejectment rather than the unlawul detainer statute to remove a tenant holding under a periodic tenancy should also satisfy the requirements of this provision. However, landlords more frequently use the speedier procedure of unlawful detainer proceedings.

It is true that the notice requirements in the various subdivisions of the unlawful detainer statute, RCW 59.12.030, vary as to the express requirement of written notice. Thus subdivision 2, which relates to the termination of a periodic tenancy, and subdivision 5, which relates to the commission of waste, the carrying on of unlawful business, or the maintenance of a nuisance, use only the term "notice." On the other hand, subdivision 3, which relates to default in payment of rent, subdivision 4, which relates to failure to keep or perform a condition or covenant of the lease, and subdivision 6, which relates to parties entering without permission or color of title, all specify "notice in writing." But all of the subdivisions (except the first, discussed above) require service in the manner provided in RCW 59.12.040, the terms of which clearly contemplate only written notice.

An exception to the requirement that notices by a landlord to terminate periodic tenancies be in writing would appear to exist in cases involving leases of agricultural land for yearly periods. In *McDonald v. Potts*,[7] the tenant held under what apparently was a tenancy from year to year for an indefinite time, or a periodic tenancy of yearly periods. The tenant's contention that the notices served upon him were insufficient to terminate the tenancy because they were not given as required under the unlawful detainer statute, now RCW 59.12.030 (2), was rejected. The court held that notice given under the provision governing holding over on agricultural land, now RCW 59.04.060, was sufficient. Other decisions of the court make it clear that an oral notice is sufficient to satisfy the requirements of that

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(1926); Wilson v. Barnes, 134 Wash. 108, 110-112, 234 Pac. 1029 (1925); Lowman v. Russell, 133 Wash. 10, 12, 233 Pac. 9 (1925). See Western Union Telegraph Co. v. Hansen & Rowland Corp., 166 F.2d 258, 262 (9th Cir., 1948). To be effective, such agreement probably must be written. *Cf.* Armstrong v. Burkett, 104 Wash. 476, 177 Pac. 333 (1918); *cf.* also Najewitz v. Seattle, 21 Wn.2d 656, 152 P.2d 722 (1944). *But see* RCW 59.04.030.

[7] 132 Wash. 59, 231 Pac. 164 (1924).

provision.[8] The reason given is that such a notice is not designed for the purpose of terminating a tenancy but for the purpose of preventing the commencement of a new tenancy which would otherwise arise under RCW 59.04.060 if the tenant held over without notice for more than 60 days after the expiration of the old tenancy. The cases holding oral notice sufficient appear to be correct. The fact that the oral notice thus given is authorized by a provision which the code revisors have placed under the sub-chapter dealing with tenancies rather than a provision in the sub-chapter dealing with unlawul detainer should not preclude a landlord from utilizing the procedures now set forth in the unlawful detainer sub-chapter. The provision governing holding over on agricultural land was section 4 of the Act of 1891,[9] from which the sub-chapter on unlawful detainer, RCW 59.12, was derived. Compliance with the notice requirements of the provision should be sufficient to qualify a landlord to utilize the procedures set up by the same Act. In effect, after such an oral notice has been given, the landlord is in a position to bring his proceeding under the first subdivision of the unlawful detainer statute, in which case no further notice is necessary.

Another exception to the requirement of written notice by the landlord would appear to exist in those rare cases involving tenancies at will. In *Najewitz v. Seattle*,[10] there was no allegation of a service of written notice, but the court found no difficulty in holding that the tenancy at will there involved was terminated upon demand for surrender of the land and that the tenant was entitled only to a reasonable time thereafter within which to vacate. Of course, if the landlord elects to terminate a tenancy at will upon oral notice, it is difficult to see how his action could be brought as an unlawful detainer action under any of the subdivisions of RCW 59.12.030, unless a tenancy at will is forced into the category of a tenancy for a term under the first subdivision. Probably the landlord would be required to show that the tenant retained the premises by force, or by menace and threat of violence, bringing his case under the forcible detainer provision of RCW 59.12.020 (1),[11] or to bring an action for ejectment.[12]

[8] Smeltzer v. Webb, 101 Wash. 568, 172 Pac. 750 (1918); Mounts v. Goranson, 29 Wash. 261, 69 Pac. 740 (1902). See Hinkhouse v. Wacker, 112 Wash. 253, 258, 191 Pac. 881 (1920).

[9] Session Laws, 1891, c. 96 §4.

[10] 21 Wn.2d 656, 152 P.2d 722 (1944).

[11] See also the last clause of RCW 59.12.140.

[12] *Cf.* Petsch v. Williams, 29 Wn.2d 136, 185 P.2d 992 (1947).

[13] Shaffer v. Walther, 38 Wn.2d 786, 794, 232 P.2d 94 (1951); Wilson v. Barnes, 134 Wash. 108, 114, 234 Pac. 1029 (1925).

Though these exceptions may be interesting, a return to the more usual problems of landlord and tenant notices seems in order. Among the most common are those notices given to terminate periodic tenancies. Subsection 2 of RCW 59.12.030 provides that a tenant under a monthly or periodic tenancy is guilty of unlawful detainer when he continues to hold over if, more than 20 days prior to the expiration of a month or period, he has been served with notice requiring him to quit the premises at the expiration of that month or period. The provision is, of course, inconsistent with the provision of the Code of 1881 now found in RCW 59.04.020, which states that a tenancy for an indefinite time, with monthly or periodic rent reserved, may be terminated by written notice of 30 days or more preceding the end of any month or period. It is clear, however, that for actions brought by a landlord under the unlawful detainer provisions of RCW 59.12.030 only the described notice of more than 20 days need be given.[13]

The case of *Provident Mutual Life Ins. Co. v. Thrower*,[14] raises some questions in this area. In that case the landlord served a notice to pay rent or quit within three days. The jury returned a verdict for the landlord, finding that the landlord was entitled to the property and that there was due as rent the sum of $265. However, the trial judge sustained a motion for a new trial unless the landlord waived the $265 awarded. This the landlord did. The supreme court affirmed, and the landlord thus obtained possession of the premises in a proceeding initiated on a notice of default in payment of rent in which the judgment finally entered awarded nothing for rent past due. The possibility that the court considered the notice good as one to terminate a periodic tenancy even though no rent was in fact due is strengthened by the statement,[15] "Since tenancy from month to month was shown to exist, it can be terminated by the statutory notice before the end of any month." If this was the basis of the decision, it would appear to have been erronenous. A notice to pay rent or surrender is premature and ineffective if served when the tenant is not in default,[16] and a tenant notified to pay rent or quit is certainly not notified that even though the rent has been paid in full the landlord desires to terminate the tenancy. The tenant might properly await receipt of the proper statutory notice of the landlord's decision to terminate the tenancy for other reasons.

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[14] 155 Wash. 613, 285 Pac. 654 (1930).
[15] 155 Wash. at 616.
[16] Bernard v. Triangle Music Co., 1 Wn.2d 41, 95 P.2d 43, 126 A.L.R. 558 (1939).

As indicated above, a tenant desiring to terminate such a periodic tenancy is required to give at least 30 days notice prior to the end of the month or period.[17]

A notice to terminate a tenancy given by a landlord, whether for failure to pay rent, breach of a covenant, commission of waste, or merely to terminate a periodic tenancy, should state the date upon which the tenancy will be terminated and the tenant must vacate. In *Metcalfe v. Heslop*,[18] a notice to pay rent or surrender the premises was held defective because, among other reasons, it failed to fix a time for the surrender of the premises in case of a continued failure to pay the rent.[19] With regard to a notice to terminate a periodic tenancy at the end of the period, the court had occasion to point out in *Harris v. Halverson*,[20] that the statute does not require that the notice specify the time at which the tenant must vacate, but requires only that notice be served more than 20 days prior to the expiration of the tenancy. The statute does, however, provide for a "notice * * * requiring him (the tenant) to quit the premises at the expiration of such month or period," and it would seem to follow that the notice should not be ambiguous as to which month or period is the one at the expiration of which the tenant shall quit the premises.

In the *Harris* case the court held that a notice to terminate a periodic tenancy was not defective because it required the tenant to vacate on or before the first day of the next rent period rather than the last day of the existing period. The same result was reached in *Lowman v. Russell*,[21] and the diligence of counsel has also produced a decision that a notice to terminate a periodic tenancy is not defective if it requires a tenant to vacate on or before the last day of the existing period rather than the first day of the next period.[22]

The requirements for written notices to terminate periodic tenancies given by tenants under RCW 59.04.020 may be less stringent than those imposed for notices given by landlords under the statute. In *Worthington v. Moreland Motor Truck Co.*,[23] the tenant under a periodic tenancy vacated the premises on November 1st and on the same day sent a letter with the keys to the landlord. The letter stated

[17] Worthington v. Moreland Motor Truck Co., 140 Wash. 528, 532, 250 Pac. 30 (1926).
[18] 161 Wash. 106, at 107, 296 Pac. 151 (1931).
[19] *Cf.* Davis v. Jones, 15 Wn.2d 572, at 576, 131 P.2d 430 (1942).
[20] 23 Wash. 779, 785, 63 Pac. 549 (1901).
[21] 133 Wash. 10, 12, 233 Pac. 9 (1925).
[22] Newman v. Worthen, 57 Wash. 467, at 470, 107 Pac. 188 (1910).
[23] 140 Wash. 528, 250 Pac. 30 (1926).

that the landlord might take possession as of that date. The letter was not received by the landlord until the third or fourth of the month, and the court accordingly held that it was insufficient to terminate the tenancy on November 30th, because it had not been received more than 30 days prior to that date. The court held, however, that it was sufficient notice to terminate the tenancy as of December 31st. It specifically reserved the question of whether such a notice served by a landlord would be sufficient in view of the fact that it did not fix a time when the tenancy would be terminated.

Although these cases suggest that a distinction might be drawn between different types of notices given by landlords and between notices given by landlords and notices given by tenants, it would seem a wise precaution to insert in every notice the date upon which the tenancy will be terminated or the premises surrendered. In cases involving th termination of a periodic tenancy it would seem best to set the date for termination and surrender as on or before the last day of the final period of tenancy. To set the date as the day of the beginning of the next period is, in the language of *Harris v. Halverson*,[24] the "giving of an additional day" more than necessary. In cases involving notices under other subdivisions of RCW 59.12.030, such as notices to pay rent or surrender, to perform a condition or covenant of a lease or surrender, or to quit because of the commission of waste or the conducting of an unlawful business or nuisance, the date for termination or surrender can be set in the statutory language, as for example, "within three days (or ten days) after the service of this notice."[25]

Few cases appear to have arisen concerning the manner in which time is computed for notice purposes. In *McGinnis v. Genss*,[26] the landlord served notice on January 11th to terminate a month to month tenancy at the end of that month. The tenant contended that the notice was insufficient because the service was just twenty days prior to the end of the month, rather than "more than twenty days" as required by the statute. The court held the notice sufficient saying,[27] "Including the day of service and excluding the last day of the month, there would be at the end of the month of January twenty days. * * * The word 'more' does not add any additional time to the twenty days,

[24] *Supra*, note 20.

[25] See, *e.g.* Davis v. Jones, 15 Wn.2d 572, 575, 131 P.2d 430 (1942); Erz v. Reese, 157 Wash. 32, 33, 288 Pac. 255 (1930); Metcalf v. Heslop, 161 Wash. 106, 108, 296 Pac. 151 (1931); Boyd v. North, 114 Wash. 540, 542, 195 Pac. 1011 (1921); Commercial Waterway Dist. v. Larson, 26 Wn.2d 219, 220, 173 P.2d 531 (1946).

[26] 25 Wash. 490, 65 Pac. 755 (1901).

[27] 25 Wash. at 491.

but merely designates the complete expiration of that number of days." In *Ferguson v. Hoshi*,[28] a similar contention was rejected. While the court's opinion in the *Ferguson* case only makes reference to the previous decision in the *McGinnis* case, a headnote to the decision states the rule for computation of time in a more usual fashion: "... it is sufficient to give twenty days' notice prior to the end of the month or period, excluding the day of service." Although the formula for computation of time is differently stated in the two cases, it is apparent that to terminate a periodic tenancy under RCW 59.12.030 (2) twenty full days must elapse between the service of the notice and the expiration of the tenancy. To be effective, notice must be served at the latest at some time on the twenty-first day before the expiration of the period. The statutory requirement of "more than twenty days" is satisfied if, excluding the date of service, 20 full days remain before the expiration of the designated period.

The case of *Woodling v. Sawyer*[29] provides additional information concerning the computation of time for notice purposes. In that case the landlord served a notice to pay rent or surrender on April 9th. The tenants failed to pay the rent. The court held that the period of their unlawful detainer did not begin until April 13th. From this it may be inferred that the court did not count the day of service in determining what would constitute the statutory three day period of RCW 59.12.030 (3), and likewise that partial calendar days will not be added together to make up the statutory period. The decision would appear to be applicable to determination of statutory periods under the other subdivisions of RCW 59.12.030, and hence of importance in determining the time after notice during which a tenant may avoid a forfeiture by performing a covenant of the lease as well as the time during which a tender of the rent due will prevent a termination of the tenancy.

A notice should contain an adequate description of the premises involved. In *Metcalfe v. Heslop*,[30] the complaint alleged that the defendant was the lessee of a building known as the Metz Apartments situated on lots two and three, block eleven, J. J. McGilvra's Third Addition to the City of Seattle. However, the notice served upon the tenant to pay rent or surrender was addressed only, "Mrs. E. Marie Heslop, Metz Apartments" and contained no further description of the property. The notice was held insufficient because, among other

[28] 25 Wash. 664, 66 Pac. 105 (1901).
[29] 38 Wn.2d 381, 229 P.2d 535 (1951).
[30] 161 Wash. 106, 296 Pac. 151 (1931).

things, it did not describe the property adequately. The inadequacy of the description may, of course, have been merely one of the factors which led to the conclusion that the notice was insufficient when considered with the other important defects of the notice. The inference that this is so is strengthened by consideration of the descriptions of the property in the notices held sufficient in other cases.[31] As those cases suggest, the crucial test should be whether the tenant was misled by the inadequacy of the description. Though that may be the rule which the court should follow in deciding litigated cases, it is obviously not the rule to follow as a draftsman, and it is probably wise to insert in such a notice the legal description of the property, such as would be used in a lease or deed, in addition to the common description of the premises.

As mentioned above, one of the facts relied on in holding defective a notice to pay rent or surrender in *Metcalfe v. Heslop*,[32] was the fact that the notice failed to state the amount of the rent due. The same reason was given, among others, in holding a similar notice defective in *Byrkett v. Gardner*.[33] Accordingly, the careful draftsman preparing a notice to pay rent or surrender will insert in the notice a demand for the exact amount of rent due. A less carefully drafted notice may be effective if it is sufficiently definite to enable the tenant to make a tender of the claimed amount and avoid a forfeiture.[34] Thus, in *Erz v. Reese*,[35] the notice stated that the tenant was "in default in the payment of rent, which matured and became payable upon the first day of several months last past, and particularly of the rent which matured and became payable upon the first day of December, 1928, and the first day of January, 1929, the total of which defaulted rental now aggregates a little over the sum of eight hundred dollars . . ." The court held the notice barely sufficient, saying the tenant would have been justified in tendering the minimum of $800, if that was the amount due, thereby avoiding a forfeiture. In *Ralph v. Lomer*,[36] which involved a notice given under what is now RCW 59.04.040, rather than the unlawful detainer provisions of RCW 59.12.030, the notice did not state the amount of rent due, but did state that it was the rent

[31] Davis v. Jones, *supra*, note 19; Provident Mutual Life Ins. Co. v. Thrower, *supra*, note 1. See also Erz v. Reese, *supra*, note 25.
[32] 161 Wash. 106, 296 Pac. 151 (1931).
[33] 35 Wash. 668, 676, 77 Pac. 1049 (1904).
[34] Erz v. Reese, 157 Wash. 32, 35, 228 Pac. 255 (1930); Ralph v. Lomer, 3 Wash. 401, 407, 28 Pac. 760 (1891); see also Byrkett v. Gardner, *supra*, note 33.
[35] *Supra*, note 34.
[36] *Ibid.*

due on the first day of February. The notice was held sufficient in view of the facts that there was no controversy as to the amount due and that the tenant made a late tender of the correct amount. The decision was later cited in *Erz v. Reese*,[37] and therefore would seem to be authority for the notice requirements of the unlawful detainer statute. In *Olson Land Co. v. Alki Park Co.*[38] a notice stating the months for which rent was due without a computation of the total amount due was likewise held sufficient on the basis of the decision in *Ralph v. Lomer*.

The results in a number of cases create some confusion, but they are probably explainable as oversights induced by the failure of counsel to argue the point. Thus, as mentioned above, in *Provident Mutual Life Ins. Co. v. Thrower*[39] the court affirmed a judgment awarding restitution of the premises to the landlord who had demanded the payment of $430 as rent past due, even though the verdict returned by the jury was for only $265 and the judgment entered by the trial court gave nothing for rent due. In *Davis v. Jones*[40] the court, without discussing the effect of an excessive demand, affirmed a judgment in favor of the landlord upon facts indicating that at the time of the service of the notice the amount of rent actually due was only $32 whereas the notice demanded the payment of $339.50 as delinquent rent. In another case,[41] judgment for the landlord in an unlawful detainer action was affirmed where the notice included a demand for rent actually due to the landlord's grantor rather than to the landlord-plaintiff. In *Walker v. Myers*[42] the court also awarded restitution of the premises to a landlord who had overstated the amount of the rent due in a notice to pay rent or surrender.

If, as the cases considering the point indicate, the test is whether the tenant was prejudiced by the failure to state the amount of rent due or by an incorrect statement of the amount due, it would seem that an understatement of the amount of rent due should not make the notice defective. In such a case the tenant is able to avoid a forfeiture by making a timely tender of the amount demanded. Though the payment of that amount might not preclude the landlord from recovering the additional amount of rent actually due, it would be a complete defense to an unlawful detainer proceeding based on that notice. Where the amount demanded is excessive but the tenant is in default,

[37] *Ibid.*
[38] 63 Wash. 521, 115 Pac. 1083 (1911).
[39] 155 Wash. 613, 285 Pac. 654 (1930).
[40] 15 Wn.2d 572, 131 P.2d 430 (1942).
[41] Kneeland Inv. Co. v. Aldrich, 63 Wash. 609, 116 Pac. 264 (1911).
[42] 166 Wash. 392, 7 P.2d 21 (1932).

the cases discussed above indicate that notice will be considered defective, at least where the tenant has a good faith doubt as to whether any rent was due and would otherwise be placed in the position of tendering an amount which he did not believe to be due upon the penalty of forfeiture if any amount were found owing. The drastic consequences of a forfeiture indicate the propriety of limiting the landlord's right of action to situations in which he correctly informed the tenant of the amount due, or at least did not prejudice the tenant in his determination of whether the notice was valid and to be obeyed. Of course, if the landlord has correctly stated the amount due the tenant's good faith is immaterial.

The number of cases in which the tenant has a good faith doubt as to whether any rent is due or is prejudiced by an excessive demand are probably few. The tenant is ordinarily in as good a position as the landlord to compute the amount of rent due. If the tenant admits that a certain amount is due and fails to tender even that after notice of the landlord's intention to terminate for default in rent, it is difficult to see how he has been prejudiced by the fact that the landlord asserted that a greater amount was due, or why the landlord should be compelled to begin again to declare a forfeiture for the non-payment of rent which the tenant admits is due and has already failed to pay.

Notices under RCW 59.12.030 (4) to terminate a tenancy for failure to keep or perform a condition or covenant of the lease must allege with particularity the acts or failures to act upon which the lessor bases his decision to terminate. It is not sufficient merely to notify the tenant which conditions or covenants the lessor believes have not been kept or performed; reference must be made to the specific acts or omissions constituting the breach. The reason for requiring such particularity is to give the tenant an opportunity to remedy the acts and correct or suply the omissions during the 10-day period granted by the statute for that purpose.[43]

Thus, a notice to terminate the lease because of a breach of a covenant to cultivate the land in a farmerlike manner was held insufficient when it did not supply the details as to what acts or omissions constituted such a breach.[44] Another notice to terminate was held defective where the only allegations concerning various defaults fol-

[43] Woodward v. Blanchett, 36 Wn.2d 27, at 31, 216 P.2d 228 (1950); Thisius v. Sealander, 26 Wn.2d 810, at 815, 175 P.2d 619 (1946); Byrkett v. Gardner, 35 Wash. 668, 674-675, 77 Pac. 1048 (1904).

[44] Woodward v. Blanchett, *supra*, note 43.

lowed the wording of the lease very closely.[45] Likewise, a notice containing a general recital of the conditions and covenants of the lease, followed by the statement that the lessee had failed to keep "each and all" of such conditions and covenants was held insufficient because it did not state the facts constituting such a breach or inform the tenant of what he might do to avoid a forfeiture.[46]

The same degree of particularity may not be necessary for notices served under subdivision 5 of RCW 59.12.030, requiring a tenant to vacate because he has committed or permitted waste, set up an unlawful business, or suffered or permitted a nuisance on the premises. The reason for requiring such particularity in notices involving breaches of conditions of covenants is, as indicated above, that they must be sufficient to inform the tenant what things he must do to avoid the forfeiture. No such alternative is given a tenant who has committed waste, etc., and that need for particularity would therefore not exist. However, since the double damages for unlawful detainer may impose a substantial liability on the tenant, he may be entitled to a notice sufficiently definite to enable him to form a judgment as to his legal position if he decides to remain in possession. Certainly a landlord should not be the beneficiary of double damages if he has misled a tenant into believing he may safely remain in possession because the acts relied on by the landlord do not constitute waste, etc. Accordingly, it is probably a wise precaution to give as much detail as possible in such a notice, coupled with general allegations in the language of the statute.

Although there are no cases requiring that it be done, it is probably wise to include in all notices a statement of which sub-sections of the unlawful detainer statute are relied upon by the landlord. Such a provision furnishes additional notice to the tenant of the nature of the remedy asserted by the landlord, and its inclusion may be helpful in sustaining the effectiveness of an otherwise doubtful notice.[47]

Notices addressed to tenants should be signed by the landlord or in the landlord's name by an agent, rather than by the agent in his own name, although signature in the agent's name only will not render the notice defective if the lessee knows of the agency and is not misled by the form of the signature.[48]

[45] Thisuis v. Sealander, *supra*, note 43.

[46] Byrkett v. Gardner, *supra*, note 43. For an example of a notice alleging in detail the facts constituting the breach of conditions and covenants in a lease, see the notice served by the lessor in Wilson v. Daniels, 31 Wn.2d 633, at 638, 198 P.2d 496 (1948).

[47] *Cf.* Erz v. Reese, *supra*, note 25.

[48] Provident Mutual Life Ins. Co. v. Thrower, 155 Wash. 613, at 617, 285 Pac. 654

At this point it might also be noted that *Hinkhouse v. Wacker*,[49] which involved a lease of community property invalid because, among other things, it had not been signed by the wife, a notice signed by the husband alone was held sufficient to prevent the commencement of a new tenancy under RCW 59.04.060 by holding over an agricultural land for more than 60 days. The court did not discuss the effect of the failure of the wife to sign the notice, and, as pointed out above, such notices involve an exception to the general rules governing landlord and tenant notices. There appear to be no cases directly dealing with the question of the necessity of both spouse's signatures on landlord and tenant notices concerning leases of community property. Though the husband's authority as manager of the community property should be sufficient to sustain such notices when given as landlord, even over the opposition of his wife, the obvious course of action for the careful draftsman is to provide for signature by both or in both names by their agent.

Where the tenants of the leased property are man and wife, the notice should be directed to and served on both. In *Metcalfe v. Heslop*,[50] and *Hinkhouse v. Wacker*[51] notices served on only the wife were held insufficient. The court's discussion of the problem in the *Hinkhouse*[52] case, suggests that it considered the husband to be the only person entitled to the service, but the statement in the *Metcalfe* case,[53] that the notice "was insufficient, as the same is directed to one of the respondents only" also suggests that the reason for holding that notice insufficient was not that it was served on the wife only but that it was not served on both spouses. Moreover, since the wife's signature to a lease of premises occupied by the husband and wife as lessees is unnecessary to bind the community,[54] there is a danger of a holding that her signature was added so that the husband and wife could hold as tenants in common rather than as a community. The doubt created is sufficient to indicate the course to follow, though the results of litigation probably would be that service on the husband alone was sufficient. The court has said that the husband's right as manager of the community to decide the question of relinquishment of a lease cannot

(1930); *cf.* Bond v. Chapman, 34 Wash. 606, 76 Pac. 97 (1904); Bowman v. Harrison, 59 Wash. 56, 57, 109 Pac. 192 (1910).

[49] 112 Wash. 253, 191 Pac. 881 (1920).

[50] 161 Wash. 106, 107, 296 Pac. 151 (1931).

[51] 112 Wash. 253, 257, 191 Pac. 881 (1920).

[52] 112 Wash. at 257.

[53] 161Wash. at 107.

[54] Monroe v. Stayt, 57 Wash. 592, 107 Pac. 517, 30 L.R.A. (n.s.) 1102 (1910).

be defeated by the acts of the wife.[55] Moreover, the husband has the same right to assign and transfer a lease as he has to dispose of chattels generally, without the consent of his wife,[56] and it would seem that notices directed to and served on him alone, which give him the option to pay rent, or to keep and perform conditions and covenants, or to surrender the lease interest, should be sufficient as coming within his power to dispose of the lease.[57] By analogy, the other notice requirements of the unlawful detainer statute should be satisfied by service on the husband alone.

With regard to the service of unlawful detainer notices by a landlord generally it may be noted that if service is not made by delivering a copy personally to the person entitled thereto, care should be taken to fulfill all of the requirements of the alternative forms of service of RCW 59.12.040. The tenant has a right to stand upon proof of the exact service required by the statute.[58] Partial compliance with the requirements of the alternative forms of service will not be sufficient, as, for example, where a copy of the notice is left at the premises with a person of suitable age and discretion but no copy is sent by mail addressed to the person entitled thereto at his place of residence.[59]

Some cases suggest that the parties to the lease may make other provisions for the giving of notices which will be effective even though they differ from the provisions of the unlawful detainer statute. Thus, in *Shaffer v. Walther,*[60] the court restated the instruction given by the trial court to the effect that the parties could orally agree upon some other method of terminating the tenancy and that such method would be binding upon the parties. But the supreme court did not pass on the correctness of the instruction, and the trial court may have intended to state no more than that a tenant under a periodic tenancy who has agreed to vacate on a certain day and thus led his landlord to believe that written notice to terminate was unnecessary could waive his right to written notice. Likewise, in *Ralph v. Lomer,*[61] the court mentioned that the tenant had, by the terms of the lease, waived notice and agreed that the landlord might reenter without notice upon failure to pay rent, thereby indicating that such an agreement would be valid. But the

[55] Gabrielson v. Swinburne, 184 Wash. 242, at 247, 51 P.2d 368 (1935).
[56] Tibbals v. Iffland, 10 Wash. 451, at 457, 39 Pac. 102 (1895).
[57] *Cf.* Halvorsen v. Pacific County, 22 Wn.2d 532, 156 P.2d 907 (1945).
[58] See O'Connell v. Arai, 63 Wash. 280, 282-283, 115 Pac. 95 (1911); Lowman v. West, 8 Wash. 355, 359, 36 Pac. 258 (1894).
[59] Hinkhouse v. Wacker, *supra,* note 8; *cf.* Smith v. Seattle Camp No. 69 W.O.W., 57 Wash. 556, 107 Pac. 372 (1910). See Harris v. Halverson, 23 Wash. 779, 787, 63 Pac. 549 (1901).
[60] 38 Wn.2d 786, 794, 232 P.2d 94 (1946).
[61] 3 Wash. 401, 408, 28 Pac. 760 (1891).

court also held that the notice given by the landlord was sufficient, and, more important, the case did not arise under the present unlawful detainer statute. Such provisions may be valid if the landlord seeks to recover possession of the premises in an ejectment proceeding,[62] although they would provide no justification for repossession by force without legal proceedings.[63] An entirely different question arises, however, if the landlord attempts to utilize the procedures of the unlawful detainer statute.

Where the landlord seeks to recover possession of the premises under the unlawful detainer statue, RCW 59.12.030, *et seq.*, the case of *Jeffries v. Spencer*[64] makes it clear that he must serve the notices required by that act, and that provisions in the lease taking away from the tenant the benefit of those notice provisions will not be given effect. In that case the lease provided that on default in payment of rent for thirty days after due the lessors might reenter and at their option terminate the lease. The court rejected the landlord's contention that this provision rendered the statutory notices unnecessary for the maintenance of an unlawful detainer proceeding for default in rent and the commission of waste. It said,[65] "The appellants overlook the plain fact that the summary action for unlawful detainer is only accorded after three days' notice either to quit or pay rent or to quit absolutely, according to the nature of the default. It is no hardship to require the giving of the statutory notice as a condition precedent to invoking the benefit of the statutory remedy. In the case before us, the plaintiffs seek to terminate the lease both for the failure to pay rent and because of the commission of waste. To maintain the action, either form of notice would have been sufficient, but it is admitted that neither was given. The notice being a statutory prerequisite to the invocation of the statutory remedy, the action was properly dismissed."

Where the provision in the lease accords the tenant greater protection than that offered by the notice provisions of the unlawful detainer statute, there can be little doubt that the parties had in mind the unlawful detainer statute and intended such a provision to supplant the statutory notice period. There is no such conflict with the policy of the act, and the landlord must comply with the lease provisions.[66]

[62] *Cf.* Petsch v. Williams, *supra*, note 12.
[63] Spencer v. Commercial Co., 30 Wash. 520, 71 Pac. 53 (1902).
[64] 86 Wash. 133, 149 Pac. 651 (1915); *cf.* Thisius v. Sealander, 26 Wn.2d 810, 818, 175 P.2d 619 (1946).
[65] 86 Wash. at 136.
[66] Income Properties Inv. Corp. v. Trefethen, 155 Wash. 493, 501-502, 284 Pac. 782 (1930); Gray v. Gregory, 36 Wn.2d 416, 218 P.2d 307 (1950).

CONCLUSION

The foregoing discussion suggests that, as a matter of precaution but not necessarily as the rules to be applied in litigation, the following practices be observed in connection with landlord and tenant notices:

1. Notices should always be in writing.
2. The notice should state the date upon which the tenancy will be terminated.
3. The notice should be served so that, excluding the date of service, the statutory periods and any periods required by the lease will remain before the date of the termination of the tenancy and the commencement of an action.
4. The notice should contain an adequate description of the premises involved, preferably both the legal description and any common description known to the parties to the tenancy.
5. Notices to pay rent or surrender should state the exact amount of the defaulted rent.
6. Notices to perform conditions or covenants or surrender the premises should state in detail the facts constituting the breach of the condition or covenant so that the tenant may know exactly what he might do to avoid a forfeiture of the lease.
7. The same detail should be inserted in notices to vacate for the commission of waste.
8. The notice should make reference to the portion of the statute under which it is given.
9. Notices should be signed by the landlord or in the landlord's name by an agent, and not in the agent's name.
10. Where husband and wife are involved as parties to the tenancy, both should sign the notice, or the signature should be in the names of both by an agent.
11. The provisions of RCW 59.12.040 regarding service of notices should be followed exactly and without deviation, and, if a husband and wife are parties to the lease, copies of the notice should be served on both.
12. No reliance should be placed on notice provisions in the lease if they afford the tenant less protection than the unlawful detainer statute, though they should be followed if they grant the tenant greater protection.